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From "Social Licence" to "Social Partnership": Promoting Shared Interests for Resource and Infrastructure Development

Canada needs robust, but timely regulatory reviews of energy infrastructure projects. The creation of arms-length stakeholder groups can foster greater public confidence in such projects and their operators. Industry bodies and companies can make more extensive, effective use of international best practices to strengthen public engagement and regulatory adherence.

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The Study In Brief

Social partnerships have become a key element for energy and related infrastructure development. Failure to secure social acceptance increases the risks of litigation of a project or political conflict that creates significant barriers to economically viable resource development.

The central challenge facing governments, businesses, and affected communities is how to bridge the gap between regulatory requirements ostensibly intended to serve the broader public interest, and competing views of "legitimacy" based on the accommodation of diverse social and political interests and values. This challenge may be greatest in dealing with First Nations, especially the growing but often loosely defined legal recognition of rights to consultation and accommodation of their ways of life and uses of traditional lands.

In this *Commentary*, the authors examine case studies of successful community engagement in different settings involving resource sector firms, local and provincial governments, Aboriginal communities, and other local stakeholders. The authors examine a number of approaches to addressing local concerns. Those are:

- *Building Multi-Stakeholder Groups and Networks*: Local or regional industry working groups including industry representatives provide a valuable means of strengthening connections with local governments and communities, public health authorities and local emergency response professionals in order to reduce risks, address community concerns, and respond more effectively to occasional emergencies. The group process appears to complement the activities of regulators such as the Alberta Energy Regulator.
- *Multi-Jurisdictional Projects:* Multi-jurisdictional initiatives require parallel processes that respect legal, institutional and social differences in various jurisdictions. The authors find successful examples of formal multi-stakeholder advisory processes in British Columbia that could inform future negotiations elsewhere.
- *Engaging First Nations and Aboriginal Communities*: One major factor common to many past disputes with First Nations has been a frustrated community leadership. Consultation prior to detailed project design or approval has become a central factor influencing First Nations' acceptance of resource projects affecting traditional lands.

The energy sector's involvement in hundreds of diverse communities points to a number of lessons. Provincial and federal governments and regulators can do more by promoting multi-stakeholder groups and disclosing more about emergency response plans. Industry bodies should promote cultures of continuous improvement reinforced by benchmarks and internal reporting requirements that demonstrate adherence. Energy firms themselves can look to international certifications of their processes of social partnership.

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Whatever the vagaries of commodity price cycles, the development, processing and marketing of natural resources remain critical elements of Canada's economy and major sources of revenue for several provinces and the federal government.

Shifting market conditions and political attitudes, especially in the United States, have increased the importance of finding new Canadian energy export markets outside North America. Yet, both developing resource projects and the major infrastructure necessary to bring them to market have become increasingly controversial. Political conflict often leads to lengthy regulatory and litigation-induced project delays, multi-billion-dollar cost escalations and even cancellations.

These conflicts have several causes. Public attitudes toward resource-related infrastructure development have become increasingly demanding, requiring energy firms to pay much greater attention to environmental and safety risks. There are growing expectations that companies address the disruptive effects of resource development on local communities and on regional air and water quality. The resulting disputes reflect perceptions that the costs and benefits of resource development are unevenly distributed among Canada's diverse regions and communities. Many Canadians also expect resource firms to mitigate potential effects associated with climate change, even though such measures would require far broader policy and societal adaptations beyond the control of individual actors.

These challenges to managing and regulating resource-related infrastructure development projects have become a major source of political risk and economic uncertainty for resource firms, especially those in the oil and gas sector. They have prompted widespread industry discussions over measures that could enhance social acceptance of resource development and related infrastructure projects (CAPP 2014; Prno and Slocombe 2012). The political effects of specific disputes might be relatively localized, reflecting environmental impacts on local landowners and communities (Stephenson 2014; Vanderklippe 2012). They can also be more widespread, as in recent challenges to and regulatory constraints on the use of hydraulic fracturing for oil and gas exploration in Quebec, Nova Scotia and New Brunswick.

Key Findings and Recommendations

This *Commentary* explores the concepts of "social acceptance," or "social partnership," as one aspect of promoting greater stability in resource-related infrastructure development. We argue that the cultivation of social partnerships is an essential part of a broader set of responses to growing challenges to the political and societal legitimacy of such development. The effective pursuit of social acceptance through promoting improved dialogue and mutual respect among stakeholders could secure greater legitimacy for

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resource development and related infrastructure projects. Effective engagement should draw from existing models of successful multistakeholder consultation and cooperation to secure mutual accommodation between the interests of companies and stakeholders throughout a project's life cycle.

We define "social partnerships" as the cultivation of relationships between resource and/or infrastructure firms and affected communities so that community members have a stake in the success of projects and companies are seen to support the well-being of those communities. We discuss three broad models of successful community engagement that to date have demonstrated effective approaches to combining resource and related infrastructure development:

- community-based and sub-regional multistakeholder "synergy" groups, usually funded through a combination of public, community and industry sources;
- government-led initiatives within significant provincial sub-regions; and
- "corridor coalitions" involving both major business and local stakeholders over an extended area.

We show how companies and governments could strengthen relations with communities and stakeholders to complement both good business practices and regulatory processes. Such approaches would contribute to the development of a stable, constructive and mutually beneficial climate over the lives of projects, helping to build capacity for community engagement and to secure shared, ongoing economic benefits from responsible resource development.

We note the evolving efforts of governments (and regulators), industry organizations and individual firms to integrate social partnerships into their broader regulatory and corporate policies. Federal and provincial regulators often contribute to these objectives by building or extending cooperative networks to support the evolution of best practices in project design, public safety, environmental monitoring and emergency preparedness and response. Key approaches include promoting the formation of multistakeholder groups and encouraging proactive industry outreach to municipal governments and First Nations through corridor coalitions and related approaches to, for example, the negotiation of rights-of-way and the management of ongoing operations. Although such approaches can take different forms, provincial initiatives have demonstrated the benefits of direct participation by regulators in multistakeholder processes to strengthen two-way communication and develop processes to address local concerns. Such approaches are not a guarantee against the systematic efforts of some activist groups to obstruct any new resource-related infrastructure development. However, they provide avenues for building greater mutual understanding between companies and communities, which would increase the likelihood that all sides will find mutual interests, thereby reducing the appeal of "zero-sum" approaches that largely reject bargaining and accommodation.

The claims and interests of First Nations and other Aboriginal communities require particular attention as actual and prospective "rightsholders," particularly over traditional lands and disputed territories, and as stakeholders with continuing economic, cultural and environmental interests over lands affected by resource and infrastructure development. Successive court decisions have strengthened the legal claims of Aboriginal communities to substantive consultation and recognition of land ownership rights, particularly in British Columbia. These decisions have created varied legal and political conditions for resource development that have substantially changed traditional relationships with First Nations without providing a clear road map to govern the conditions for future developments.

Consultation processes involving these communities must recognize their diverse interests, along with their varied dynamics in balancing the interests of members living on- and off-reserve. These processes also must not ignore the

inequalities among First Nations communities that often complicate efforts to negotiate internal as well as external consensus. For this reason, such consultations will often involve reconciliation of competing Aboriginal interests and agendas, as well as considerable patience and flexibility in finding ways to integrate the objectives of companies, governments and non-Aboriginal communities. Failure to do so – or efforts to push through development against the opposition of community leaders – would invite extended litigation and other challenges.

We recognize that social acceptance and partnerships, while helpful in responding to business risks arising from challenges to resource development, are only a partial response to broader public interest concerns. However, they can play a vital role in strengthening trust and diffusing conflicts by reconciling four key objectives associated with the development of responsible energy development policies:

- security of market access;
- environmental protection;
- physical security of citizens, communities and public infrastructure; and
- balancing economic and social interests through direct and continuing stakeholder participation (Gattinger 2012).

Effective partnership building should draw from existing models of multistakeholder consultation and cooperation throughout a project's life cycle to promote effective community engagement. Maintaining such partnerships would require credible community and business leadership, a commitment to mutual respect and accommodation within existing legal frameworks and relatively stable funding by governments, communities and industry to enable community outreach and ongoing communication. As well, maintaining social acceptance would require practical, locally accessible means for dispute resolution and effective recourse for individual property owners and communities.

Regulation and community engagement are complementary, rather than discrete, processes. Indeed, regulatory requirements for monitoring environmental performance, public safety, emergency preparedness and response and other issues could provide positive incentives for firm-level engagement with multistakeholder groups. At the same time, effective provincial mandates for intermunicipal coordination are often necessary to facilitate the harmonization of public and private sector infrastructure investment with related measures for environmental protection, public safety and emergency preparedness.

Social Acceptance or "Social Licence"?

Recognition of the growing importance of social acceptance for resource projects, sometimes called "social licence," emerged from debates in developing countries during the 1980s and 1990s (Joyce and Thomson 2000). These countries typically had weak governance systems and huge internal power disparities between residents of often-remote communities near resource projects on the one hand and their governments and major business interests on the other. These communities traditionally had experienced few sustained economic benefits from resource development, while bearing a disproportionate share of the environmental and social costs.

In this *Commentary*, we use the concept of "social acceptance," rather than that of "social licence," whose meaning and purpose is sufficiently debated to lead seasoned observers to despair that it "probably has as many definitions as it has users" (Cleland 2013, 1). Business, academic and technical discussions of social licence often reflect different assumptions and priorities that suggest competing solitudes. Business analyses often approach the concept as a means of "getting and keeping access to valuable business resources like marketing, financing, talent, raw materials, infrastructure sites and legal permits" (Boutilier, Black and Thomson

2012, 4). Alternatively, particular communities and stakeholder groups might pursue de facto vetoes over particular projects or attempt to determine the terms on which they will be permitted to proceed, preferably with legal or regulatory guarantees (Fluker forthcoming). We have drawn on Yates and Horwath's (2013, 1) concept of social licence or social acceptance as "a community's acceptance or approval of a company's project or ongoing presence in an area." This definition acknowledges varying degrees of public acceptance, ranging from grudging acquiescence to active identification of project goals with community interests. Acceptance also might vary over time, based on the extent to which businesses and regulators attend to community interests and concerns.

Securing social acceptance largely depends on the degree to which companies and communities are able to achieve mutual trust contributing to "win-win" outcomes that address overlapping but often-distinct priorities. Securing social acceptance becomes more difficult, however, when communities see the protection of their interests as dependent on alliances with outside activist groups that pursue much stricter development limits as part of a broader policy or ideological agenda. Some advocacy groups have come to define themselves by systematic opposition to most forms of resource development, contributing to the zero-sum approach noted above.[1] Creating and maintaining opportunities for dialogue, consultation and partnership do not preclude such obstructionist tactics. However, they offer viable alternatives that, with perseverance and good faith, give community members credible assurance of ongoing attention to their interests and concerns.

Public mistrust has fuelled public opposition to major resource-related infrastructure projects, contributing to growing delays and more stringent regulatory conditions to secure project approval. These developments have created significant political and economic risks to the expansion of the energy and other resource sectors (CAPP 2014; CEPA 2012). Failures by particular firms can undercut broader industry efforts to address legitimate public concerns, fostering a more adversarial political and regulatory climate. Published opinion surveys indicate that limited public trust of major institutions extends well beyond the energy and resource development sectors (Moore et al. 2013; Sajid 2014). The most important concerns contributing to public attitudes are about public health and safety, overall environmental responsibility and the minimization of environmental impacts.

There are two types of opponents to resource projects: those whose acceptance or support can be achieved through effective consultation and feedback, and those who will not change their view, no matter what. We focus on the former, while recognizing that levels of citizen engagement, relative support and opposition are variable and subject to change, depending on the qualities of local, governmental and business leadership, and perceptions that key community interests can be reconciled with development in practical ways. As Newman (2014a) and others note, the need for consultation with affected publics on major resource projects is a practical necessity. It is important for businesses to pursue mutually beneficial relationships with affected communities, but it would be unwise to allow the fluidity and variability

1 Gattinger (2015) and others have described broader normative and ideological opposition to resource development ranging from local environmental concerns associated with traditional NIMBYism and "BANANA" (Build Absolutely Nothing Anywhere Near Anything) to "NOPE" (Not on Planet Earth), which prompts various forms of activism, potentially including civil disobedience.

of social acceptance to be manipulated into an "extra-legal" requirement that could be used to disrupt or negate formal regulatory processes.

Social acceptance of regulatory outcomes might be threatened when citizens no longer trust government to accommodate their interests. Groups whose rights or interests historically have been marginalized or ignored – particularly First Nations communities whose traditional lands might be affected by particular projects (Belanger and Lackenbauer 2014) – might resort to protracted litigation, occupations and even blockades. Engaging such concerns through effective recognition and accommodation of Aboriginal rights and interests has become an effective precondition for resource-related project development (Asch 2014; Canada 2014; Newman 2014a,b). As one notable unintended consequence, the 2012 revisions to the *National Energy Board Act* (s. 55.2) that limited public participation in its processes to persons "directly affected" by proposed applications and those with "relevant information and expertise" showed that the federal government needs to address broader public concerns through clearly explained benchmarks subject to independent external verification.

The greater the physical scale or geographic footprint of a particular project, the harder it becomes to maintain distinctions between social licence as "an informal concept with no basis in law" (Yates and Horwath 2013, 3) and formal regulatory processes established to authorize and oversee particular projects. On broader policy issues, government must balance competing interests and address core public values offended by particular practices. Without a stable policy framework, achieving outcomes of continuing mutual benefit will be difficult when central policy goals and tradeoffs are up for grabs. Regardless, it is important for individual firms and industry groups to engage with particular communities on issues of shared economic benefits, social impact and environmental responsibility.

The central challenge facing government, major businesses and affected communities is how to bridge the gap between legality – especially compliance with regulatory requirements ostensibly intended to serve the broader public interest – and competing views of legitimacy based on accommodation of diverse social and political interests and values. This challenge is greatest in dealing with Aboriginal peoples, especially in relation to the growing but often loosely defined legal recognition of their rights to consultation and accommodation of their ways of life and uses of traditional lands (Asch 2014; Newman 2014b).

We define social partnerships as the cultivation of relationships between resource and/or infrastructure firms and affected communities so that community members have a stake in the success of projects, and companies are seen to support the well-being of those communities. Rather than a "one-size-fits-all" approach, building social partnerships requires strategic analysis and community relations tools already used by many North American corporations and some regulators in Canada. Three core principles of building such partnerships are:

- mutual respect based on recognition and responsiveness to local concerns;
- the cultivation of opportunities for shared, ongoing economic benefits; and
- the identification of prospective risks to the community and working with it to minimize and mitigate such risks, while contributing to social and environmental outcomes valued by the community.

Social acceptance provides resource-related infrastructure projects greater political and public legitimacy. But securing such acceptance goes well beyond influencing public opinion or promoting responsible corporate behaviour. Social partnership models need to cultivate and maintain mutual respect of communities and stakeholder groups. Effective partnerships require sustained commitments to cooperation with local

governments and other stakeholders affected by major resource development and infrastructure projects. Meaningful engagement should draw from and adapt existing models of multistakeholder consultation and cooperation to secure mutual accommodation between the interests of companies and stakeholders throughout a project's life cycle (American Petroleum Institute 2014; CEPA 2012; Synergy Alberta 2014). Such an approach, which would go beyond existing consultation processes mandated as part of project-specific consultation activities, could enhance both the material well-being and the quality of life of affected communities. By contributing to the development of shared interests, the process should also reduce political risk and contribute to a more stable operational environment for resource firms.

Moving beyond "Licence": Social Acceptance in the Canadian Context

Several factors can complicate the achieving of social acceptance. Industry advocacy often focuses on regulatory coordination within and among different government departments and agencies. The greater the number of governments and regulatory actors associated with any single project, the greater the challenges in accommodating particular interests within the broader public interest – and the greater the potential for regulatory paralysis (Doucet 2012).

For example, interactions with First Nations might overlap with both federal and provincial jurisdictions (Willow 2012). As well, there might be interjurisdictional delegations of selected regulatory functions, as with responsibilities for emergency management and responses to railway accidents involving hazardous materials (Hale 2013, 145). And entrenched constitutional norms often require federal departments and agencies to deal directly with their provincial counterparts on issues that also fall into areas of municipal responsibility (Juillet and Koji 2013, 44–56). Provincial regulatory requirements, however, often lack formal mechanisms to provide for effective consultation with municipalities. As a result, federal and provincial regulatory processes can lead to major political disputes, as in recent conflicts over "urban drilling" policies in Alberta and the expansion of Kinder Morgan's Trans-Mountain Pipeline and related terminal facilities in Burnaby, British Columbia.

In some areas, the question of social acceptance is closely linked with unresolved issues arising from past failures of governments and businesses (including Crown corporations) to deal fairly with First Nations. The resulting legacies of marginalization and exclusion have led many such communities to view outside economic interests with suspicion. In the words of one Aboriginal elder, "If you're not doing something with us, you're doing it to us." The challenge of effective engagement with Aboriginal communities exists in all regions, although legal, sociocultural and operational circumstances vary widely both among provinces and among these communities. Aboriginal communities approach such discussions both as rights-holders, emphasizing the recognition of established rights to land and/or participation in governance, and as "stakeholders" whose interests overlap and/or compete with those of other actors. Key factors in shaping relations include the degree of respect for Aboriginal communities, the relative effectiveness of government processes for engaging particular communities and whether Aboriginals participate meaningfully in proposed resource development.

If they are to navigate often-complex political and cultural sensitivities, resource companies need to invest the effort necessary to understand local interests in the early stages of proposed projects (Hasselback 2014; Hunter 2014; Robinson 2014). Regulators can enhance their credibility by investing in community outreach activities to explain their policies and processes – and by providing redress when necessary. The effectiveness

of such measures often depends, however, on the presence of credible local interlocutors capable of cultivating constructive engagement among stakeholders, rather than pitting them against one another.

The Variety of Settings

The scale and widely varying capacities of small towns and rural communities (including First Nations) increase the challenges of building effective social partnerships. Such hurdles include identifying whom to include in these processes (beyond local governments and Aboriginal communities) and building the required mutual trust. Navigating the politics of major urban regions, some of which include urban First Nations communities, also has distinct challenges. The types of hurdles depend on local political cultures and the presence or absence of provincially mandated coordination processes and, where relevant, inclusion of First Nations.

Canadian provinces and US state governments have initiated several different models of consultation and capacity building in recent years. For example, "synergy group" models in Alberta encourage the development of local and regional multistakeholder organizations that meet regularly to foster communication between companies and area communities. Such groups, which sometimes overlap with special-purpose, sub-regional or community organizations, address related public safety or environmental concerns. As another example, the pending renewal of the Columbia River Treaty has prompted the British Columbia government (and related US "entities") to form and fund parallel engagement processes with local communities and First Nations. These multistakeholder mechanisms provide structured opportunities for communities to identify specific issues requiring negotiation and occasions to exchange information, facilitate data gathering and identify priorities for technical research.

Taking another approach, major infrastructure companies in the United States and Canada have developed "corridor coalitions," sometimes in cooperation with state or provincial governments, to consult with communities along their rights of way, identifying priorities for operational improvements, potential synergies with local economic development and other community concerns. Such mechanisms might involve compensation to local communities and individual landowners for disruptions resulting from infrastructure expansion or related support for local procurement, employment and/or projects to enhance community infrastructure (Galley 2015; McNeill 2015). Natural gas producers have developed similar approaches with First Nations along proposed pipeline corridors in northern British Columbia. However, it is important to maintain some flexibility when negotiating the routing and location of particular projects to address the risk of holdouts: groups that refuse to support projects for various reasons and whose objections cannot be accommodated effectively within existing legal requirements.

The success of each approach ultimately depends on credible community and business leadership, commitment to mutual respect and accommodation within existing legal frameworks and relatively stable funding to enable community outreach and ongoing communication. Broader policy questions are the responsibility of the federal and provincial governments. The federal government, in particular, has sought to integrate widely dispersed regulatory processes through its Major Projects Management Office to establish clear conditions for regulatory approvals of proposed major resource-related infrastructure projects. Meanwhile, businesses and governments have recognized the need to build capacity to engage communities at each stage of the project life cycle (American Petroleum Institute 2014). Some of these processes involve the capacity to address "nuisance issues" at a local level. Others involve the ongoing development and institutionalization of "best practices" in local

community, public safety and environmental management, which, over time, might become formalized in regulation.

Building Multistakeholder ("Synergy") Groups and Networks

The intensification of energy sector activity in Alberta and several other provinces has demonstrated the importance of securing strong community relations. Industry groups have discovered that partnering with local communities in multistakeholder organizations, including municipal governments, emergency responders, environmental organizations and other members of the public, is usually more effective than arm's-length dealings. These examples are useful for jurisdictions with a limited history of energy and other resource development. Clearly, such partnerships are likely to take different forms in major urban areas, smaller communities or rural areas and with First Nations communities.

In recent years, the Alberta government has funded Synergy Alberta, which promotes the development of community-based multistakeholder groups. Two notable examples of established groups created to strengthen industry-community relations on public safety and environmental issues are the Sundre Petroleum Operators Group (SPOG) in west-central Alberta and the Lakeland Industry and Community Association in the northeastern part of the province.

SPOG operates in a rural farming and ranching area of about 2,500 square kilometres southwest of Red Deer. Formed following Shell Canada's controversial construction of a sour gas processing plant[2] near Caroline, Alberta, it became a multistakeholder organization in 1996, mainly funded by dues of local oil and gas operators, and later, pipeline firms. Members include local energy and related service firms, municipal governments, residents and the Alberta Energy Regulator. Provincial requirements that all firms provide advance notice of sour gas drilling through home visits to residents of affected areas provide a practical incentive for membership in SPOG because of its cooperative Resident Visit and mutual aid programs. A 24-hour, 1-800 line exists to report emergency incidents, odour complaints and other concerns. SPOG's website has become the reporting hub for area energy firms, sharing information on environmental issues and industry operations.

Local officials credit SPOG for playing a major role in strengthening public safety by facilitating the purchase of a new communications system linking first responders in several area municipalities and by coordinating mutual aid arrangements and legally required emergency preparedness exercises (Hale 2013). Other achievements claimed include developing regional performance standards for sour gas drilling – all firms drilling for sour gas must notify local residents through home visits beforehand – hydraulic fracturing and traffic management. The latter has included such practical accommodations as the rescheduling of heavy equipment around school bus hours (SPOG 2012). SPOG also provides mediation and dispute resolution processes when conflicts arise between resource firms and local landowners.

For its part, the Lakeland Industry and Community Association provides a different community relations model by linking regional environmental monitoring organizations with energy firms, local governments, citizens and Aboriginal communities across some 25,000 square kilometres of northeastern Alberta. In 2011, the region had an urban population of some 27,000 and

2 Sour gas is natural gas containing significant levels of hydrogen sulfide, a toxic substance.

a rural population of 17,000. Lakeland's activities overlap those of the Beaver River Watershed Authority, a provincially sponsored organization that monitors and provides public feedback on water-quality issues.[3] Its Airshed Monitoring Committee tracks natural and man-made emissions, reporting on concentrations and trend levels of various pollutants. Lakeland also belongs to the Joint Oil Sands Monitoring Authority established by the federal and Alberta governments to monitor the cumulative environmental impact of oil sands development. Lakeland's multistakeholder board has representatives of industry, local citizens, businesses and Métis communities. Its staff and board members provide a joint resolution committee to mediate and, if possible, resolve concerns and disputes between resource firms and local landowners and communities.

Some rural municipalities attempt to coordinate their longer-term development plans with resource firms to maximize short-term output and terminate production when particular areas are released for development. However, the deficiency or absence of formal rules governing responsibilities to engage local communities and governments suggest overall weaknesses in provincial planning and permitting procedures. Synergy groups complement, but do not replace, the responsibilities of regulators. For example, in addition to its formal enforcement functions, the Alberta Energy Regulator also provides mediation and other dispute resolution services to individuals and companies (Alberta Energy Regulator n.d.).

Multijurisdictional Projects

Multijurisdictional initiatives in which government agencies are direct stakeholders require parallel processes that respect legal, institutional and social differences. Take the Columbia River Treaty. When Canada (with British Columbia) and the United States negotiated it in the early 1960s, only these governments were involved. Today, the entities that administer the treaty – BC Hydro, the US Bonneville Power Authority and the US Army Corps of Engineers – face competing social and political pressures from multiple interests that must be accommodated. As a result, both the British Columbia government and the US entities have established formal multistakeholder advisory processes to inform their negotiating positions.[4]

The provincial position (British Columbia 2014) emerged from extensive consultations with local governments and First Nations. It complements the ongoing activities of the Columbia Basin Trust, a provincial Crown corporation mandated to support community economic and social development in partnership with local communities across the basin. These initiatives, coordinated through four regional municipalities, have built strong institutional relationships among local governments throughout the region. Consultation processes also took place with three tribal councils representing 30 First Nations treaty bands. Consensus building within and among each set of communities was a complex, time-consuming process requiring the reconciliation of numerous local interests and cross-border conversations with related native American tribal councils (Christian 2014).

The Columbia River Treaty's high political profile requires balancing the interests of province-wide and diverse local constituencies. It also involves a complex political poker game, with US interests attempting to reduce cross-border payments for the treaty's downstream benefits while shifting more of the costs of flood control,

3 See the website of the Alberta Watershed Planning and Advisory Councils, at http://albertawpacs.ca/.

4 As water resources and power generation are primarily within provincial ownership and management, the British Columbia government defines Canadian interests and priorities related to the Columbia River Treaty.

fisheries management and other environmental considerations to British Columbia (US Entity 2013). The complex challenges and policy tradeoffs are comparable to those of building major energy infrastructure projects across the province. Bankes and Cosens (2012) suggest that successful negotiations will require "incrementalism" and "modesty of ambition" to balance the facilitation of investment with sufficient flexibility.

Corridor Coalitions

Widely dispersed projects such as pipeline and other transportation corridors offer additional challenges. One approach, developed by state governments in cooperation with the BNSF freight railway in the western United States, has been to sponsor the development of corridor coalitions to engage local economic development agencies along actual (or proposed) rights of way. Another, initiated by Chevron in conjunction with the proposed construction of the Kitimat liquefied natural gas (LNG) terminal and related Pacific Trails pipeline in northwestern British Columbia, has prompted the creation of the First Nations Limited Partnership, recently expanded to include 16 First Nations along its proposed right-of-way. (We discuss this issue further below.) Such collaborative approaches can identify opportunities for local value added and improved network efficiency. They might also facilitate more specialized functions, such as first responders and other emergency preparedness authorities to enhance local and regional capacities for risk management, response and recovery in case of environmental or other disasters.

The operations of major urban industrial or resource-processing facilities, including refineries, storage and transshipment terminals, create different challenges for community relations. Provincial governments can play a vital role in mandating processes for intermunicipal cooperation. Such measures are often vital for the coordination of public and private sector investments in priority infrastructure projects. Sustained cooperation between industry and municipal officials in engineering preventive measures for public safety, environmental quality and emergency response is indispensible to effective project design and to building and sustaining public trust.

First Nations and Other Aboriginal Communities

The greatest potential for political and social conflict over proposed development projects arises from the weakness of effective processes to engage First Nations and other Aboriginal peoples who seek substantially increased recognition of their diverse interests, legal claims and constitutional rights, including, but not limited to, resource and infrastructure developments that affect their traditional lands. Failure to engage Aboriginal communities can result in major barriers to investment, employment and escalating project costs (PricewaterhouseCoopers 2009). It can also affect national reputations, providing vehicles for nongovernmental organizations to mobilize public opinion to obstruct Canadian energy exports.

In some cases, working relationships have enabled Aboriginal peoples to become partners, not just advisers, in co-management agreements. However, such progress requires patience and perseverance to overcome a chaotic environment in which community leaders might be challenged internally by activists championing maximalist agendas for social and political change (Simpson 2015). At last count, there were roughly 615 First Nations, close to 1,000 Aboriginal communities (including Métis and Inuit) and more than 2,700 reserves (Belanger 2014b). These communities represent varied social and political conditions, reinforced by legal, treaty and other constitutional arrangements, which largely preclude a one-size-fits-all approach to partnerships and co-management relationships. Hence, energy-related infrastructure firms should approach each

situation in its particular context to identify the conditions for building relationships with affected constituencies.

Aboriginal communities offer clear challenges to traditional approaches to energy and infrastructure development, not least the potential for expensive and time-consuming rights litigation. Aboriginal peoples are vested with special and evolving constitutional rights most often attached to three key categories of lands: treaty lands, lands where Aboriginal title has yet to be extinguished by treaty, and lands where formal title has been extinguished but residual rights remain.

Treaty lands are lands that have been formally surrendered through a negotiated treaty process that likewise resulted in Aboriginal title being extinguished. Where Aboriginal title to land has yet to be extinguished formally by treaty, the Supreme Court of Canada (in *Tsilhqot'in Nation v. British Columbia*) has identified such lands as implicitly possessing Aboriginal title. Although certain Aboriginal title claims are unlikely to be successful due to issues of overlapping claims between different communities that give rise to unique complexities, this judgment has direct implications for most of British Columbia, parts of Yukon, the Northwest Territories, Quebec and all the Atlantic provinces, except for the Labrador portion of Newfoundland and Labrador. Communities claiming these lands must be consulted.

Where Aboriginal title has been extinguished, a community may still claim the right to be consulted, a prerogative upheld by the Supreme Court. Specifically, the Crown not only has a duty to consult, but, where appropriate, also to accommodate Aboriginal peoples before entering and claiming those lands for its own purposes if it contemplates actions that might affect potential or established Aboriginal or treaty rights adversely. Given different views of its application (see, for example, Newman 2014b), the interpretation of this right is likely to be the subject of ongoing legal contests.

The challenge of building trust is complicated by other judicial decisions that support federal and provincial desires to reduce or eliminate Aboriginal title and rights (Henderson 2006). However, existing Canadian law, strongly supported by many First Nations governments, treats Aboriginal title as a collective title held by the community. This means that a local contingent within the community could undermine relationship-building efforts by filing a court action seeking to restrict a proposed development. This reality complicates efforts to bring together neighbouring communities with historic ethnocultural ties. It also places a premium on effective internal consensus building by Aboriginal leaders. As a result, disputes over the adequacy of decision-making processes or compensation offered to Aboriginal peoples in specific cases typically require protracted negotiations or invite extended litigation.

It helps to clarify conflicting judicial interpretations of what access and consultation entail. Both the federal government and the Supreme Court of Canada have identified as problematic the ongoing reliance on the courts to resolve conflicts, indicating instead a preference for negotiated agreements (Newman and Coates 2014). Such initiatives can take a variety of forms, as demonstrated by the more than 300 benefit- and revenue-sharing agreements with First Nations negotiated in British Columbia alone since 2005 (Hoekstra and Pynn 2015). Ironically, the incentives for governments or private firms seeking greater economic or regulatory certainty in negotiating such agreements often work at cross-purposes with those of First Nations communities, which are usually wary of the loss of control over their way of life associated with large-scale change.

Failure to engage First Nations in substantive consultation from the initial planning stages, however, risks misunderstandings and conflicts leading to threatened (or actual) litigation, along with potential challenges to formal regulatory processes through occupations and blockades.

Wilkes (2004, 450) notes there were at least 260 such events between 1981 and 2000, most designed to generate media coverage. These protests can have a ripple effect. In 2013, the British Columbia Supreme Court (in *Behn v. Moulton Contracting*) awarded sizable damages against a contractor for failing to warn suppliers of an imminent blockade resulting from the province's failure to consult with the Fort Nelson First Nation about proposed logging activity. As Pue (2005, 45) explains, direct action is in many cases also deemed an expression of sovereignty, since the courts have determined that "Aboriginal Peoples are uniquely able to claim interest in or ownership of land that to all external appearances seems to belong to public authorities or (possibly) others." This consequently can impede the Crown from laying trespassing charges when Aboriginal individuals believe that it is not possible to trespass on one's own lands (Belanger 2014a).

Ongoing negotiations among the Haida nation and the federal and British Columbia governments since the 1980s provide yet another model for mutual recognition and partnership building. In 1987, the Haida participated in forging a deal between the federal and British Columbia governments that led to the establishment of South Moresby National Park in what was then known as the Queen Charlotte Islands. A 1993 agreement between the Haida and Environment Canada guided management in the renamed Gwaii Haanas National Park (Rossiter 2015). The Haida in both cases were not completely satisfied with the outcome, but welcomed the empowerment of being included in the negotiations.

Clearly, improved industry-Aboriginal-government partnerships are necessary to navigate this complex matrix of culture, politics and distinctive viewpoints about advantageous development. New approaches to relationship building are needed, not only by companies contemplating particular projects, but also by provincial governments, as documented by recent controversies over BC Hydro's "Site C" dam on the Peace River. Pursuing social partnerships and the attendant consultation would defuse pressures for direct action while simultaneously allowing participating provinces and corporations to follow the Supreme Court of Canada's Taku and Haida decisions that identify a provincial duty to consult.

Industry's Substantive Responses

The Canadian Energy Pipeline Association has recognized the importance of proactive industry engagement, noting that regulatory processes can be delayed or derailed due to "allegations of inadequate consultation" (CEPA 2014). As highlighted below, energy and pipeline firms can also contribute to local and regional capacity building. Such exercises might include measures to address initial applications for development and the negotiation of customized agreements related to project development and operations. To address broader life-cycle questions, longer-term partnerships are required to ensure the effective sharing of benefits and management or the avoidance of risks (CEPA 2014). Consistent application of such inclusive approaches also would recognize the spirit of historic Aboriginal treaties that viewed land sharing beyond strict cessions and surrenders.

This realization has led to the expansion of consultation and business partnerships with First Nations and other Aboriginal communities. An example is the $341 million deal in 2013 between Alberta and the Tsuu T'ina First Nation granting provincial access to reserve land to complete the Calgary ring road. Another example is the First Nations Limited Partnership negotiated by 15 (later 16) First Nations with the consortium building the Pacific Trail Pipeline to support LNG exports from Kitimat, British Columbia.

Recently, however, the 3,600-member Lax Kw'alaams community rejected, on environmental grounds, $1.14 billion in incentives over a 40-year period from Malaysia's Petronas to approve a LNG export terminal on traditional lands in Prince Rupert, British Columbia (Jang 2015). This case, among others, strongly suggests that

economic inducements should be accompanied by responsiveness to environmental and cultural concerns. The Supreme Court of Canada's 1999 *Corbière* decision highlights the importance of companies working with First Nations' authorities to provide opportunities for information sharing and engagement where significant numbers of non-resident band members have voting rights on such proposals.

Rather than acting unilaterally and risking litigation and project delays, an ongoing commitment to social partnership with Aboriginal communities is a relatively time- and cost-efficient strategy that would increase the likelihood of diffusing potential conflicts and winning broader social acceptance, engagement and negotiation.

Integrating Social Partnerships with Broader Regulatory and Corporate Policies

The energy sector's involvement in hundreds of Canadian communities is diverse enough that it requires a varied, adaptable toolkit to manage evolving public expectations associated with social acceptance. The industry's credibility in achieving and maintaining such acceptance for its activities will be related directly to its operational performance. As we have seen, several models of multistakeholder partnerships can enhance communications, environmental performance and social acceptance of industry operations. However, both the specific forms these partnerships take and their effectiveness in cultivating social acceptance also require more strategic approaches by governments, specific regulatory agencies, national industry associations and individual firms.

Regulatory Engagement

Governments can play a catalytic role in effective multistakeholder engagement. They can, for example, facilitate or mandate processes for substantive community engagement to enable the mutual accommodation of rights and interests. Improved cooperation between federal and provincial regulators could improve coordination of their respective safety, emergency preparedness/response and environmental regulatory processes.

Consistent with the principle that "what gets measured gets managed," governments should review environmental and public safety regulatory frameworks to ensure appropriate monitoring and disclosure of incidents and outcomes. For interprovincial operations such as pipelines and railway shipments of hydrocarbons, the federal and provincial governments should coordinate reporting requirements and standards with major industry associations (O'Neil 2015). If nationwide federal-provincial standards cannot be readily negotiated, this would be a useful regulatory harmonization project for the New West Partnership – a free trade zone among British Columbia, Alberta and Saskatchewan – along with the federal government.

Public confidence in the emergency management (EM) capacity of energy producers, pipelines and rail shipments would be enhanced by full disclosure of companies' emergency response plans to provincial and local EM and first response agencies. Saskatchewan, for example, requires all upstream energy firms to document their capacity to meet provincial spill-response standards, including deployment of relevant equipment, or to join regional Spill and Emergency Response Contingency Units where they operate (Saskatchewan 2014). Industry security concerns could be allayed by only requiring public disclosure of emergency plan summaries. The three westernmost provinces – all of which have extensive oil and gas sectors – already operate 24-hour hotlines for reporting spills and other incidents. As well, maintaining close liaison with local multistakeholder bodies would reinforce the response capacities of the relevant provincial departments and agencies, and provide practical answerability for following up such incidents.

Another dimension of transparency involves federal legislative and regulatory standards that govern industry payments to local and Aboriginal governments. The *Extractive Sector Transparency Measures Act*, proclaimed in June 2015, requires most companies to disclose all payments over $100,000 made annually to governments in relation to the commercial development of oil, gas or minerals. Disclosure applies on a project level, and must be posted on firms' websites. The *Act* takes effect in 2016 for federal and sub-national governments in any country in which Canadian-based firms operate, and in 2017 for First Nations governments (Canada 2015; Chatwin, Grbesik, and Yung 2015). These rules, along with those of the *First Nations Financial Transparency Act*, are a significant departure from traditional practices of confidentiality in legal agreements between businesses and governments. Although many technical and regulatory details remain to be resolved, these initiatives provide opportunities for greater public transparency that both companies and governments can use to demonstrate the benefits arising from resource development, while disciplining potential financial abuses.

Regional and local partnerships also provide a practical means for the collaborative review of risks from the development and application of new technologies. For example, public concerns over seismic activity associated with hydraulic fracturing, or "fracking," recently led the Alberta Energy Regulator to mandate industry monitoring and reporting of seismic activities above a minimum threshold. The new rules also require individual operators to modify their operations when such incidents occur, and to incorporate these changes into their emergency response plans (Alberta Energy Regulator 2015; Pratt 2015).

Provincial regulators can also engage in proactive engagement through multistakeholder groups by encouraging outreach to municipal governments, while building or extending cooperative networks related to public safety and environmental monitoring. As noted above, this approach can take different forms in different areas, depending on the nature of local community and intergovernmental networks. Multistakeholder organizations can enhance their credibility by maintaining websites for regular reporting to the community, as well as holding meetings to enable ongoing community engagement.

Industry-Level Engagement

Major industry associations can also play a significant role in addressing broader and technical questions of public safety, environmental performance and social engagement. Although such activities necessarily take place at the national or provincial level, they provide practical engagement incentives for senior executives of major firms, as well as opportunities among smaller firms to shape expectations and build capacity.

The Canadian Association of Petroleum Producers and the Canadian Energy Pipeline Association, for example, actively encourage the pooling of member firms' resources and experience on a wide range of operational, safety, environmental and community engagement issues. These activities contribute to the sharing of best practices and the development of industry guidelines as a complement to changing regulatory standards. In some cases, these guidelines have evolved into more formal policy statements, such as the pipeline association's Integrity First program and the petroleum association's Responsible Canadian Energy Program, both with external advisory committees drawn from cross-sections of outside interests. The petroleum producers have also provided financial support (along with provincial governments) to develop province-wide and regional multistakeholder organizations such as Synergy Alberta and counterparts in British Columbia and Nova Scotia.

Such initiatives might contribute over time to reinforcing corporate cultures of responsibility for public safety, environmental management and community engagement. To move beyond mere

public relations, however, such initiatives need to be reinforced by benchmarks and internal reporting requirements that demonstrate adherence to the "cultures of continuous improvement" often affirmed in industry statements.

Firm-Level Engagement

Building meaningful social partnerships means integrating their values into corporate policies and interactions with suppliers, customers and communities. The development of community partnerships is most effective when it flows from a business culture that is endorsed and led by senior management and communicated clearly in policy documents, employee training and performance review processes.

Many major firms have come to recognize the importance of building such an internal culture of responsibility, respect, risk mitigation and accountability as part of broader human resources, ethics and risk-management policies. Kinder Morgan's Code of Business Conduct and Ethics provides one such model that outlines clear principles and rules for employee behaviour, requirements for consulting and informing supervisors when in doubt about appropriate practices -and the establishment of an internal accountability framework, including a third-party-administered ethics hotline (Kinder Morgan 2000, rev. 2014). Encana's Courtesy Matters program provides another example (Encana 2015).

These practices reflect elements of ISO-14001, an international business standard that integrates strategic risk and environmental management guidelines with the strategies, management and operations of individual corporations. Among other things, ISO certification requires firms to establish processes to "understand the needs and expectations of interested parties" as addressed by the kinds of social partnership processes discussed in this *Commentary*. Although smaller companies are likely to prefer more informal models, similar outcomes can be achieved by creating incentives for membership in multistakeholder organizations. In this way, smaller firms can pool resources and benefit from the expertise of larger firms and other industry professionals.

Approaches to the development of positive community relations and social partnerships vary widely, as the examples above demonstrate. Factors influencing these processes include the scale of particular projects, the number and nature of communities affected and their prior experiences (positive or negative) with major projects. Other important factors are the extent and timing of opportunities for positive local economic spinoffs and the identification of potential negative effects – social, cultural or environmental – of specific projects, especially on Aboriginal communities (Yates and Horwath 2013, 8).

These realities call for a flexible and variable response, but one that incorporates effective and ongoing communications on projects and activities, respectful engagement with (and listening to) local communities and practical responses to concerns that arise from these processes.

Conclusion

We recognize the potential value of streamlining major federal and provincial regulatory processes to encourage greater efficiency (Doucet 2012). However, we strongly urge that this objective be combined with measures to accommodate community interests and objectives to create a broadly shared public interest in resource and infrastructure development. We understand and share the concern of businesses that governance processes for the energy sector and related transportation structures should provide a stable, predictable business environment capable of supporting profitable long-term investments. Regulatory processes provide a basis for legality, but they do not inherently provide legitimacy.

Improved regulatory coordination and the cultivation of social acceptance are not either-or choices for restoring greater stability for

resource development projects. Rather, they are complementary aspects of a larger process. Building and sustaining the legitimacy of resource development depend increasingly on the demonstration of ongoing commitment by industry and governments to the economic, social and environmental well-being of the communities in and through which they operate.

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